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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 COOK PRODUCTIONS, LLC,

9 Plaintiff,

10 v.

11 THOMAS SWANICKE, et al.,

12 Defendants.

C16-1884 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) Plaintiff's motion to permit alternative mail service on defendants Steve
16 Austin and Tyree Smith, docket no. 36, is GRANTED in part and DENIED in part. The
17 Federal Rules of Civil Procedure authorize service in any manner provided by the law of
18 the state in which the Court sits. Fed. R. Civ. P. 4(e)(1). Washington permits service via
19 mail where the plaintiff sets forth the following facts: (1) that the defendant could not be
20 found in Washington after a diligent search; (2) that the defendant was a resident of
21 Washington; and (3) that the defendant had either left the state or concealed himself
22 within it, with intent to defraud creditors or avoid service of process. *Pascua v. Heil*, 126
23 Wn. App. 520, 526 (2005) (citing RCW 4.28.100(2); CR 4(d)(4)).

(a) As to defendant Tyree Smith, plaintiff has set forth facts establishing
all of these requirements and therefore, its motion to permit alternative mail
service is GRANTED. Plaintiff attempted to serve defendant Smith at his home in
Washington on six occasions over an approximately two week period and was
repeatedly denied access. Decl. of David Lowe, docket no. 37, ¶ 3; Summons
Returned Unexecuted, docket no. 34. Under these facts, the Court finds that
service on defendant Smith by mail is warranted.

1 (b) As to defendant Steve Austin, the Court is not satisfied that
2 defendant Austin is intentionally avoiding service. Over a period of twelve days,
3 the process server attempted service on six separate occasions at defendant
4 Austin's home. Summons Returned Unexecuted, docket no. 33, at 2. On each
5 occasion, the process server heard dogs barking inside the house but received no
6 answer at the door. *Id.* There is no indication that anyone other than the dogs was
7 home during the times the process server attempted service. *See id.* (noting that on
8 May 1, 2017, during plaintiff's third attempt at service, there were "no visible
changes on property," and that on May 8, 2017, during plaintiff's sixth attempt at
service, there was "no sign of anyone being home."). Based on the current record,
the Court cannot reasonably rule out the possibility that plaintiff's difficulties in
effecting personal service were the result of defendant Austin being away from his
home for entirely legitimate reasons unrelated to plaintiff's attempts to serve him.
Accordingly, plaintiff's motion to permit alternative mail service on defendant
Austin is DENIED.

9 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
10 record and to defendant Thomas Swanicke pro se via U.S. mail at 8203 86th Ave. NE,
Marysville, WA, 98270.

11 Dated this 25th day of May, 2017.

12 William M. McCool
13 Clerk

14 s/Karen Dews
15 Deputy Clerk
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